

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**FRANK HUEY,**

**Petitioner,**

**v.**

**WARDEN JOE EASTERLING,**

**Respondent.**

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**No. 3:08-0824  
Judge Trauger**

**ORDER**

The court has before it a *pro se* petition for a writ of *habeas corpus* filed under 28 U.S.C. § 2254. (Docket Entry No. 1) Also before the court is the respondent's motion to dismiss this action as untimely. (Docket Entry No. 17)

As provided in the memorandum entered contemporaneously herewith, the court finds that the petition is untimely, and that equitable tolling is not warranted. Therefore, the petitioner's request for equitable tolling (Docket Entry No. 10) is **DENIED**, and the respondent's motion to dismiss this action as untimely (Docket Entry No. 17) is **GRANTED**.

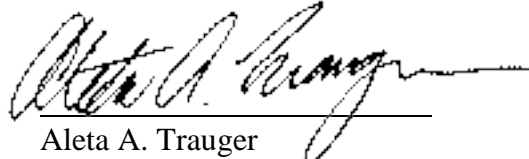
The petitioner's petition for federal *habeas corpus* relief (Docket Entry No. 7) is **DENIED**, and this action is **DISMISSED**. Rule 8(a), Rules – Section 2254 Cases. As the petitioner has paid the filing fee, his motion to proceed *in forma pauperis* (Docket Entry No. 9) is **DENIED** as moot. The petitioner's request for appointment of counsel, and to be provided with a copy of the record (Docket Entry No. 1, 11), also are **DENIED** as moot.

Should the petitioner file a notice of appeal, such notice shall be docketed as both a notice of appeal and an application for a certificate of appealability, *Slack v. McDaniel*, 529 U.S. 473, 483 (2000); Rule 22(b), Fed. R. App. P., which will **NOT** issue, *see* 28 U.S.C. § 2253(c)(2); *Castro v. United States of America*, 310 F.3d 900, 901 (6<sup>th</sup> Cir. 2002); *Murphy v. Ohio*, 263 F.3d 466, 467 (6<sup>th</sup>

Cir. 2001); *Porterfield v. Bell*, 258 F.3d 484, 485-487 (6<sup>th</sup> Cir. 2001); *Lyons v. Ohio Adult Parole Auth.*, 105 F.3d 1063, 1073 (6<sup>th</sup> Cir. 1997)(overruled in part on other grounds by *Lindh v. Murphy*, 521 U.S. 320, 326-27 (1997)).

Entry of this order shall constitute the judgment in this action.

It is so **ORDERED**.

  
Aleta A. Trauger  
United States District Judge